

RETURN DATE: MAY 30, 2023 : SUPERIOR COURT  
LESLEY MOODY : JUDICIAL DISTRICT OF FAIRFIELD  
V. : AT BRIDGEPORT  
DOUGLAS HARDING  
WILLIAM COTE : APRIL 6, 2023

**COMPLAINT**

**COUNT ONE – NEGLIGENCE  
(as to Defendant Cote)**

*The Parties*

1. The plaintiff, Lesley Moody (the “Plaintiff”), is an individual residing at 60 Harvard Avenue, Shelton, Connecticut.
2. The defendant, Douglas Harding (the “Defendant Harding”), is an individual residing at 3 Beardsley Road, Shelton, Connecticut.
3. The defendant, William Cote (the “Defendant Cote”), is an individual residing at 30 Vista Drive, East Haven, Connecticut.

*The Underlying Transaction*

4. Plaintiff is the owner of 60 Harvard Avenue, Shelton, Connecticut (the “Property”), which she acquired from Defendant Harding by warranty deed dated August 12, 2022 (the “Deed”). A true copy of the Deed is incorporated by reference as Exhibit A and will be filed and served upon all appearing parties pursuant to Conn. P.B. § 10-29.
5. Plaintiff was represented in the acquisition of the Property by Tony Jorgensen of the Jorgensen Law Firm, LLC (“Jorgensen”). Defendant Harding was represented by Defendant Cote.
6. At the time of the sale, the Property was encumbered by a mortgage (the “Mortgage”) granted by Harding in favor of Freedom Mortgage Corporation (the “Mortgagee”).

7. The consideration for the sale of the Property to Plaintiff was approximately \$286,000 (the “Sale Proceeds”), a portion of which was to be used to pay off the loan secured by the Mortgage (the “Mortgage Loan”).

8. The Sale Proceeds were to be tendered to Defendant Cote, who was to serve as settlement agent. In this capacity, Defendant Cote was responsible for using the requisite portion of the Sale Proceeds to pay off the Mortgage Loan.

9. To assure that Defendant Cote used the Sale Proceeds to pay off the Mortgage Loan, consistent with custom and practice, Defendant Cote issued a “Closing Attorney’s Undertaking” in favor of Plaintiff, Jorgensen and the title insurance company insuring Plaintiff’s title to the Property. The Undertaking specifies, in brief, that Defendant Cote will use the Sale Proceeds to pay off the Mortgage Loan and will thereafter arrange for a release of the Mortgage to be recorded.

10. Shortly before the closing, Defendant Cote requested and obtained from Mortgagee a payoff statement reflecting the monies required to pay off the Mortgage. He also requested wire instructions, which could be used to transmit the payoff amount to the Mortgagee. Thereafter, on August 10, 2022, Defendant Cote received from the Mortgagee correct payoff and wire instructions.

11. However, before he transmitted the payoff proceeds to Mortgagee, on August 15, 2022, his paralegal, Jennifer Mingione (“Mingione”), received an email from rmcormond@email.com, an unknown third-party impersonating Defendant Harding (the “Fraudster”). The Fraudster’s email reads in relevant part:

I have just received an updated payoff statement for my file closing today that reflects the reduction in this month’s mortgage payment.

I need you to make use of this update [sic] payoff statement for today’s closing. Please advise me that I can send you this payoff statement for you to update on all closing files. Waiting to hear from you.

12. Mingione responded requesting that the Fraudster send her the payoff statement, and the Fraudster thereafter sent Mingione a follow-up email with the “updated payoff statement” attached. The email reads in part:

There you go Jennifer! Attached is the updated payoff statement received and as per my last email this is the final mortgage figures [sic] and final instruction as confirmed by me from my mortgage company. Please make use of the attachment for my closing today.

The “updated payoff” attached to the Fraudster’s email specified wire instructions for a different bank and account – presumably one that the Fraudster controlled. Though the “updated payoff” contained multiple material differences from the original payoff – including removing the “overnight delivery of payment” option, and specifying that payoff funds may be remitted by “wire only” – Mingione nevertheless forwarded the “updated payoff statement” to Defendant Cote.

13. Defendant Cote proceeded to wire the payoff amount – \$159,506.29 – in accordance with the fraudulent wire instructions. Defendant Cote did not attempt to verify the authenticity of the wire instructions before doing so.

14. Defendant Cote did not thereafter make any contemporaneous attempt to confirm that the Mortgagee received the wired funds. Rather, Defendant Cote did not learn of his mistake until September 27, 2022 – nearly a month-and-a-half later – when Defendant Harding informed him that he had received a statement from the Mortgagee reflecting a balance owed on the Loan.

15. Thereafter, Defendant Cote attempted to recall the wire transfer. His efforts, however, were to no avail. As a result, the Mortgage was not paid off and remains an encumbrance on title to the Property.

*Defendant’s Conduct Breached  
the Applicable Standard of Care*

16. The standard of care applicable for attorneys serving as closing agents in real estate transactions requires that reasonable steps be taken to assure that proceeds are used to pay all disbursements specified in the closing statement, including, where applicable, to pay off

existing mortgages and liens so that the buyer will not acquire property subject to such existing mortgages or liens. Where the attorney serving in such a role is entrusted with handling and remitting funds delivered to him or her in connection with such a transaction, the applicable standard of care further dictates that prior to remitting payment via wire, the transmitting attorney contact the beneficiary of the wire via telephone (or means other than the means by which the wire instructions were received) to independently verify the authenticity and accuracy of the wire instructions.

17. Defendant Cote, as settlement agent and by virtue of the undertaking referred to in ¶ 9 above, owed a duty to Plaintiff to adhere to the standard of care set forth in ¶ 9 above.

18. Defendant Cote breached the duty he owed Plaintiff by one or more of the following negligent acts:

a. he failed to ensure he used funds delivered to him in trust for the purpose of satisfying the Mortgage Loan;

b. he failed to obtain a release of the Mortgage, although funds were delivered to him for the express purpose of securing such a release;

c. he failed to verify authenticity and accuracy of the wire instructions he obtained before wiring the payoff funds in accordance with such wire instructions; and

d. he failed to make any effort whatsoever after the wire was sent to timely confirm the funds were received by Mortgagee, foreclosing the ability to recall the wired funds.

19. As a result of the foregoing, Plaintiff has been damaged in that the Mortgage Loan has not been paid off and the Mortgage remains an encumbrance against the Property.

**COUNT TWO –  
BREACH OF COVENANT AGAINST ENCUMBRANCES  
(as to Defendant Harding)**

1-6. Paragraphs One through Six of Count One are incorporated by reference as Paragraphs One through Six of this Count Two as though fully recited herein.

7. The Deed by which Defendant Harding conveyed the Property to Plaintiff specifies, in relevant part, that the Property is conveyed subject to the following:

Taxes on the Grand List of October 1, 2021 and thereafter.

Easement for use of well as set forth in an instrument from Kenneth Pusey to Esther A. Behrie dated March 10, 1972 and recorded March 13, 1972 in Volume 254 at Page 379

Notice to Joseph Croog Company, Inc. c/o Mr. Ralph Croog from Director of Environmental Health, dated February 11, 1975 and recorded on February 24, 1975 in Volume 271 at Page 1119.

Notes, building set back line and matters as set forth on Map No. 2922 on file in the Shelton Town

The Deed further specifies, in relevant part, that the Property “is free from all encumbrances whatsoever, except as above stated.”

8. The Deed goes on to provide: “I, the said Grantor [Defendant Harding], do by these presents bind myself and my heirs and assigns forever to WARRANT AND DEFEND the above granted and bargained premises to the said Grantee [Plaintiff] and her heirs and assigns, against all claims and demands whatsoever, except as above stated.”

9. Defendant Harding has breached the covenant against encumbrances by conveying the Property to Plaintiff subject to the Mortgage.

10. As a result of the aforesaid, Plaintiff has been damaged.

**COUNT THREE –  
BREACH OF COVENANT OF WARRANTY  
(as to Defendant Harding)**

1-8. Paragraphs One through Eight of Count Two are incorporated by reference as Paragraphs One through Eight of this Count Three as though fully recited herein.

9. Defendant Harding has breached his covenant of warranty by conveying the Property subject to the Mortgage.

10. As a result of the aforesaid, Plaintiff has been damaged.

**COUNT FOUR –  
BREACH OF INDEMNITY  
(as to Defendant Harding)**

1-9. Paragraphs One through Nine of Count Three are incorporated by reference as Paragraphs One through Nine of this Count Four as though fully recited herein.

10. In connection with Defendant Harding's sale of the Property, he issued a certain Indemnity of Owner in favor of Plaintiff (the "Indemnity"), a true and correct copy of which is incorporated by reference as Exhibit B and will be filed and served upon all appearing parties pursuant to Conn. P.B. § 10-29.

11. The Indemnity provides in relevant part as follows:

The undersigned [Defendant Harding], being the owners [sic] of the [Property], hereby acknowledges that the [Property] is presently encumbered by [the Mortgage].

[Defendant Cote] has obtained a written payoff statement for these liens and I have directed [Defendant Cote] to fully pay and satisfy said liens from the closing proceeds. In the event the payoff statement provided is not accurate, I agree to immediately tender all funds necessary to pay these liens in full.

In consideration of the issuance of policies of title insurance without exception to the above-referenced liens, the undersigned [Defendant Harding] agrees to indemnify and hold harmless [Plaintiff], [her] attorney, and [her] title insurance company from any against all loss, cost or damage, including attorney's fees and court costs, arising or resulting from any claim made in connection with said liens.

12. In the ways alleged above, Defendant Harding has breached the Indemnity.

13. As a result of the aforesaid, Plaintiff has been damaged.

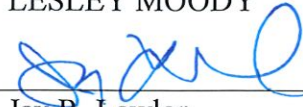
WHEREFORE, the Plaintiff, Lesley Moody, prays that the Court grant her the following relief:

1. Damages;
2. Attorney's fees;
3. Costs; and
4. Such other relief as the Court deems appropriate.

Dated at Hartford, Connecticut this 6<sup>th</sup> day of April, 2023.

THE PLAINTIFF,  
LESLEY MOODY

By: \_\_\_\_\_



Jay R. Lawlor

Hoopes Morganthaler Rausch &  
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Its Attorneys

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**STATEMENT OF AMOUNT IN DEMAND**

The amount in demand is in excess of Fifteen Thousand and 00/100 (\$15,000) Dollars exclusive of interest and costs.

THE PLAINTIFF,  
LESLEY MOODY

By: \_\_\_\_\_



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